

EDWARD L. JOHNSON

IBLA 83-323

Decided June 2, 1983

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease, NM 55019 (OK).

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

4. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: Edward L. Johnson, pro se; Robert J. Uram, Esq., Field Office, Southwest Region, Office of the Solicitor, for the Bureau of Land Management. 1/

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Edward L. Johnson appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 12, 1982, rejecting his higher bid of the two bids submitted for competitive oil and gas lease NM 55019 (OK), parcel 53 in the lease sale held October 27, 1982. Parcel 53 is described as lot 4, sec. 3, T. 16 N., R. 26 W., Indian meridian, Roger Mills County, Oklahoma (31.30 acres). BLM rejected appellant's bid of \$2,016 (\$64.41 per acre) because Minerals Management Service (MMS) had recommended rejection of the bid as inadequate on the basis that MMS' pre-sale estimate of the value for this parcel was greater than appellant's bid. Appended to BLM's decision, for Johnson's information, was the MMS justification for its recommendation, showing the various factors and "input data values" utilized. The actual amount of the pre-sale evaluation was not given, however.

Appellant argues that MMS improperly evaluated data relating to oil and gas production in the vicinity; that MMS used an evaluation method which is the "worst possible manner to evaluate lands in the Midcontinent region"; that MMS grossly miscalculated the drilling and operating costs and return; and that the lack of bidding on this parcel indicated a "fair market value" lower than that of MMS' estimate.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is rational basis for the conclusion

1/ Counsel for BLM was granted two separate extensions of time in which to file a reply. The last extension expired Apr. 18, 1983, after which counsel indicated that a response would not be filed. However, counsel transmitted MMS' prepared response to appellant's statement of reasons, which we will consider.

that the highest bid does not represent a fair market value for the parcel. Read and Stevens, Inc., 70 IBLA 377 (1983); Harris-Headrick, 66 IBLA 84 (1982); Frances J. Richmond, 29 IBLA 137 (1977).

[2] Appellant challenges the adequacy of MMS' evaluation process. The Board has consistently held that MMS is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. Read and Stevens, Inc., *supra*; Snyder Oil Co., 69 IBLA 259 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Harris-Headrick, *supra* at 86; Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if a competitive oil and gas lease bid is not clearly spurious or unreasonable on its face, the Board has held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. M. Robert Paglee, 68 IBLA 231 (1982); Southern Union Exploration Co., 51 IBLA 149 (1980). In an appearance in this appeal, counsel for BLM has filed MMS' reply to appellant's statement of reasons. We have previously accepted justification for a recommendation to reject where it was submitted in order to compile a more complete record after the appeal was filed. *See* Mary M. Gonzales, 67 IBLA 351 (1982); William C. Welch, 60 IBLA 248 (1981). Copies of MMS' response were sent to appellant.

Although MMS provided for the record the data which it used, appellant attacks MMS' rationale as inaccurate and therefore insufficient. The rationale for MMS' recommendation is based on several established oil and gas wells in the general vicinity. MMS states, "Parcel 53 is located just north of some excellent Tonkawa gas wells located in sections 11, 14, 15, and 16." Appellant, however, argues that the boundary of this known reservoir, the Northwest Crawford field, was established in the late 1960's and does not include the subject land. He submitted a production zone map depicting the land in issue as separated from the referenced Tonkawa wells by a series of "dry hole" test wells. In reply, MMS remarks that, "Parcel 53 * * * is in an undefined addition to the Crawford Field Known Geologic Structure (KGS) and is not an isolated undefined KGS as the appellant states." MMS references a new Morrow gas well on the adjoining sec. 4. By reference to the production zone map appellant suggests that this Morrow field may be smaller than estimated by MMS as "dry hole" wells have been drilled at Morrow depths in the surrounding area. However, MMS discounts appellant's conclusion through information concerning the surrounding Morrow Field test wells. According to resource evaluation geologists in the Tulsa Office MMS, "[t]he limits and potential of the Morrow is certainly not known at the present time," but "a potentially large gas area could be present." Furthermore, MMS' evaluation concludes that the area includes several potentially productive zones, including Morrow and Tonkawa, and those potentials cannot be eliminated from consideration.

Moreover, information regarding September 1982 bidding for lands in Roger Mills County reveals that the highest bid received was \$1,000 per acre, the lowest bid was \$300, and the most frequent price paid was \$500. Appellant's bid of \$64.41 per acre is barely more than 20 percent of the lowest bid represented in the preceding September sale.

In calculating its pre-sale estimate, MMS used figures with which appellant does not agree, *i.e.*, operating costs, drilling costs, rate of return. We find that most of the figures offered by appellant in rebuttal have not been substantiated, and often represent his personal opinion. In one example provided by appellant, MMS stated the low and high estimates for drilling costs as \$711,594 and \$869,726, respectively, while appellant asserts that the nearby well on adjoining sec. 4 was drilled at a cost of nearly \$7 million, almost ten times higher than MMS' estimates. While MMS concedes that its previous estimates were based on data for a Tonkawa well, it calculates that the actual costs, based on published data, for a Morrow well drilled to the same depth as the nearby sec. 4 well (14,000 feet) would be \$2.5 million, for which 20 months would be required to recapture the investment and not 54.7 months as appellant asserts.

[3] As for appellant's argument that the lack of bidders was demonstrative of fair market value, it is misplaced. A lack of competitive interest offers very little evidence with regard to the actual fair market value of the land for oil and gas leasing. Mary M. Gonzales, 67 IBLA 351 (1982); Harris-Headrick, *supra*.

[4] Although the record has been supplied with substantial factual data both by appellant and by the original and supplemental memoranda by MMS, the amount of the pre-sale evaluation has not been provided. In order to adjudicate the accuracy of that figure, the Board must know what the figure is. This was demonstrated rather dramatically in the recent appeal of Stephen M. Bess, 71 IBLA 122 (1983), where it was discovered by this Board that the average production of certain wells was calculated by MMS as barrels of oil and mcf unit of gas per day, when those figures actually represented the average monthly production of those wells, in addition to other errors, such as a showing of revenues from gas sales from wells from which no gas had been sold.

In three other very recent cases in which the pre-sale evaluations were excluded from the record on appeal, this Board vacated the BLM decisions and remanded the cases for further action. Davis and Smith, Ltd., 73 IBLA 22 (1983); Read & Stevens, Inc., 72 IBLA 390 (1983); Larry White, 72 IBLA 242 (1983), (Stuebing, A. J., concurring).

In the case at bar, the supplemental MMS memorandum acknowledges that its pre-sale evaluation "primarily considered data from the Tonkawa," (a shallow formation), whereas appellant has argued "that Parcel 53 and Sec. 3 have no chance for Tonkawa production. 2/ The data used by MMS has absolutely nothing to do with the Morrow gas discovery which has put the Federal tract in the KGS." The Tonkawa formation is said to be 8,500 feet deep, whereas the Morrow is 14,000 feet deep. In its supplemental memorandum of rebuttal, MMS refers to its post-sale evaluation of the tract. That figure has also been excluded from the record, and we are unable to tell whether it agrees with the pre-sale evaluation or the extent of any variance.

2/ This statement by appellant is disputed by MMS.

The case will be remanded to BLM. A post-sale evaluation will be made, and appellant's bid will be re-adjudicated on the basis of the figure thus derived. Should the bid again be rejected, the record submitted to this Board on appeal shall be complete, with no omissions, exclusions or deletions of any documents or data, and will specifically include all actual amounts of pre- and post-sale evaluations. Should such record contain any information which is prohibited by law from public disclosure, it should be so identified. However, no record of this Department may be treated as immune from Secretarial review on appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further action in conformity herewith.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

